

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

BLANCA I. VÁZQUEZ-BURGOS,
NADIANET GUADALUPE-SANTOS,
MARGARITA RODRÍGUEZ-GRAU,
BLANCA I. OLIVO-MIRANDA, MARIA
M. RIVAS-MIRANDA, REBECCA
ORTIZ-ORTIZ, LUISA A. ACEVEDO-
RIVERA, NILSA A. MIRANDA-
ROSARIO, FELICITA RIVERA-CRUZ,
NANCY M. ORTIZ-LORENZANA,
MYRTA SERRANO-CRUZ, ALBA
FIGUEROA-OTERO, WANDA I.
VÁZQUEZ-BURGOS,

Plaintiffs,

v.

JUAN JOSE RODRÍGUEZ-PÉREZ,
BLANCA L. AYALA-RAMOS,
REINALIZ MIRANDA-MONTES,
MUNICIPALITY OF CIALES, JOHN
DOE, JANE DOE, JESUS RESTO-
RIVERA,

Defendants.

Civil No. 13-1701 (JAF)

OPINION AND ORDER

Plaintiffs Blanca I. Vázquez-Burgos (“Vázquez-Burgos”), Nadianet Guadalupe-Santos (“Guadalupe-Santos”), Margarita Rodríguez-Grau (“Rodríguez-Grau”), Blanca I. Olivo-Miranda (“Olivo-Miranda”), María M. Rivas-Miranda (“Rivas-Miranda”), Rebecca Ortiz-Ortiz (“Ortiz-Ortiz”), Luisa A. Acevedo-Rivera (“Acevedo-Rivera”), Nilsa A. Miranda-Rosario (“Miranda-Rosario”), Felícita Rivera-Cruz (“Rivera-Cruz”), Nancy M. Ortiz-Lorenzana (“Ortiz-Lorenzana”), Myrta Serrano-Cruz (“Serrano-Cruz”), Alba Figueroa-Otero (“Figueroa-Otero”), and Wanda I. Vázquez-Burgos (“Vázquez”) (collectively “Plaintiffs”) are suing Defendants Juan José Rodríguez-Pérez (“Rodríguez-

1 Pérez”), in both his personal and official capacity; Blanca L. Ayala-Ramos (“Ayala-
2 Ramos”), in both her personal and official capacity; Reinaliz Miranda-Montes
3 (“Miranda-Montes”), in both her personal and her official capacity; the Municipality of
4 Ciales (“Ciales” or “the Municipality”); John Doe; Jane Doe; and Jesús Resto-Rivera
5 (“Resto-Rivera”), in his personal capacity and in his official capacity (collectively
6 “Defendants”).

7 Plaintiffs allege violations of the First Amendment of the United States
8 Constitution, by way of political discrimination and retaliation, as well as violations of
9 the laws and Constitution of the Commonwealth of Puerto Rico. (Docket No. 21.)
10 Defendants argue that we must dismiss the complaint. (Docket No. 35.) For the reasons
11 below, we deny the Defendants’ motion to dismiss.

12 I.

13 Procedural History

14 On September 16, 2013, Plaintiffs filed a complaint against Defendants, which
15 they amended on November 21, 2013, and again on December 12, 2013. (Docket Nos. 1,
16 10, 21.) The second amended complaint alleges violations of the First Amendment of the
17 United States Constitution, by way of political discrimination and retaliation, as well as
18 violations of the laws and Constitution of the Commonwealth of Puerto Rico. (Docket
19 No. 21.) On February 11, 2014, Defendants filed a motion to dismiss for failure to state a
20 claim. (Docket No. 35.) Plaintiffs responded on March 10, 2014. (Docket No. 40.) The
21 Municipality of Ciales replied on March 17, 2014. (Docket No. 45.) On March 18, 2014,

1 Resto-Rivera filed a second motion to dismiss for failure to state a claim. (Docket
2 No. 47.)

3 II.

4 Facts

5 When considering a motion to dismiss, we must construe the complaint in the
6 plaintiff's favor, accept all non-conclusory allegations as true, and draw any reasonable
7 inferences in favor of the plaintiff. Rodríguez-Ramos v. Hernández-Gregorat, 685 F.3d
8 34, 39-40 (1st Cir. 2010) (citation omitted). Therefore, to the extent that any facts are
9 disputed, the facts set forth below represent Plaintiffs' version of the events at issue.

10 The thirteen Plaintiffs previously worked for the Municipality of Ciales. (Docket
11 No. 40 at 2.) Those who worked in the Municipality's Child Care Center program are
12 jointly identified as the "Child Care Plaintiffs." The two, Vázquez and Serrano-Cruz,
13 who worked in the Municipality's Even Start Program, are referred to as "Even Start
14 Plaintiffs." (Docket No. 40 at 3, fn. 2.) Plaintiffs were all transitory employees. Their
15 employment contracts had been consistently renewed, some for over eleven years.¹
16 (Docket No. 40 at 2.)

17 Outside their jobs, Plaintiffs were active in the campaign and political activities of
18 the former NPP-affiliated mayor, and Plaintiffs' families are well-known in Ciales as
19 loyal affiliates and followers of the NPP. Plaintiffs include poll-workers, electoral
20 coordinators, voting center volunteers, campaign workers, and members of the former

¹ The First Circuit calls employees "transitory" when they work according to contracts that are periodically renewed, rather than in career positions. See Rodriguez-Reyes v. Molina-Rodriguez, 711 F.3d 49, 52 (1st Cir. 2013). This status does not prevent Plaintiffs from bringing an action under Section 1983. See id.

1 mayor's advance team, among other political functions and positions. Plaintiffs actively
2 participated in walk-about, meet and greets, and motorcades with the former mayor.
3 They also displayed the former mayor's and NPP's political propaganda at their homes.
4 Most of this propaganda could be readily seen by residents of the Municipality, including
5 by Defendant Rodríguez-Pérez, who walked by the Plaintiffs' homes and who, allegedly,
6 along with codefendants, monitored the collaborators and supporters of his political
7 adversaries. Plaintiffs' political affiliations were common knowledge in the small
8 Municipality of Ciales. (Docket No. 40 at 2.)

9 Ciales had been under the political control of the New Progressive Party ("NPP")
10 for twelve years, from January 2001 to January 2013. In November 2012, the Popular
11 Democratic Party ("PDP")-affiliated candidate, Rodríguez-Pérez, won the mayor's seat
12 by a 66-vote margin in a bitter election. (Docket No. 40 at 1.) Soon thereafter,
13 Rodríguez-Pérez sued the former mayor accusing him of failing to initiate the transition
14 process required by law. This contributed to the already highly-charged political
15 atmosphere in the Municipality. (Docket No. 40 at 2-3.) Rodríguez-Pérez was sworn in
16 on or about mid-January 2013. Within days, Rodríguez-Pérez selected PDP Ciales
17 activists Ayala-Ramos and Miranda-Montes for the positions of Human Resources
18 Director and Director of the Child Care Center, respectively. Resto-Rivera, another PDP-
19 activist, was selected as the new Human Resources Director in April 2013 when Ayala-
20 Ramos resigned. (Docket No. 40 at 3.)

21 The Child Care Plaintiffs' appointments were set to expire on March 31, 2013.
22 Each time Plaintiffs asked Miranda-Montes about the status of their reappointments, she

1 said that the appointments would be renewed soon, but that the Municipality first needed
2 notification that their federal funding proposal for the Child Center had been approved.
3 (Docket No. 40 at 3.) Miranda-Montes also said that any reappointment would be
4 dependent on the results of a performance evaluation. Miranda-Montes told Plaintiffs to
5 buy their uniforms and that if for some reason they could not be reappointed before the
6 termination date, they would be later reinstated. (Docket No. 40 at 4.) The Child Care
7 Plaintiffs were never evaluated. Defendants trained new PDP-affiliated individuals who
8 did not work in the Municipality. Further, Rodríguez-Pérez – the nominating authority of
9 the Municipality – had openly expressed his desire to remove Plaintiffs because they
10 were “Palmas” (the nickname for NPP loyalists), who he said had made his life difficult.
11 All of the Plaintiffs’ substitutes are loyal followers of and contributors to the PDP and
12 Rodríguez-Pérez’ campaign. (Docket No. 40 at 4.)

13 The Even Start Plaintiffs were given letters on or about June 2013, signed by
14 Defendant Resto-Rivera, informing them that their appointments were to end on June 30,
15 2013. They were not evaluated before the expiration of their term. Defendants extended
16 the appointments for employees affiliated with the PDP, but not for those employees
17 affiliated with the NPP. The NPP-affiliated employees were substituted with newly-hired
18 PDP-affiliated employees. (Docket No. 40 at 4.)

19 III.

20 Analysis

21 A plaintiff’s complaint will survive a motion to dismiss if it alleges sufficient facts
22 to establish a plausible claim for relief. See Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal,

1 556 U.S. 662, 677 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).
2 In assessing a claim's plausibility, the court must construe the complaint in the plaintiff's
3 favor, accept all non-conclusory allegations as true, and draw any reasonable inferences
4 in favor of the plaintiff. Rodríguez-Ramos, 685 F.3d at 39-40 (citation omitted).

5 The inquiry into plausibility is a two-step process. First, we must separate out
6 "conclusory legal allegations (which may be disregarded) from allegations of fact (which
7 must be credited)." Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 53 (2013).
8 Second, we must decide if the factual allegations afford "a plausible claim to relief." Id.
9 We must keep in mind that "[i]t is not necessary to plead facts sufficient to establish a
10 prima facie case at the pleading stage." Id. at 54. The elements of the prima facie case
11 are only "used as a prism to shed light upon the plausibility of the claim." Id. What
12 matters is the "cumulative effect of the factual allegations." Ocasio-Hernández v.
13 Fortuño-Burset, 640 F.3d 1, 14 (1st Cir. 2011). The First Circuit has stated that a
14 "plausible but inconclusive inference from pleaded facts will survive a motion to
15 dismiss." Id. at 15 (internal citations omitted).

16 **A. First Amendment Claims**

17 Plaintiffs allege violations under the First Amendment to the United States
18 Constitution. (Docket No. 21 at 4; 42 U.S.C. § 1983.) Because they claim political
19 discrimination by state actors, Section 1983 is the proper vehicle for relief. For the
20 purposes of this section, Puerto Rico is treated like a state. Rodríguez-Reyes, 711 F.3d at
21 54.

1 **1. 42 U.S.C. § 1983**

2 Defendants argue that the Plaintiffs fail to state a valid claim under 42 U.S.C.
3 § 1983 against the individual defendants. (Docket No. 35 at 15.) The two necessary
4 elements for an action under Section 1983 are “(i) that the conduct complained of has
5 been committed under color of state law, and (ii) that this conduct worked a denial of
6 rights secured by the constitution or laws of the United States.” Rodríguez-Pérez-Reyes,
7 711 F.3d at 55 (quoting Martinez v. Colón, 54 F.3d 980, 98 (1st Cir. 1995.))

8 The Supreme Court has written that “a public employee acts under color of state
9 law while acting in his official capacity or while exercising his responsibilities pursuant
10 to state law.” West v. Atkins, 487 U.S. 42 at 50 (1988). Further, it is settled law that
11 “government officials are forbidden by the First Amendment from taking adverse action
12 against public employees on the basis of political affiliation, unless political loyalty is an
13 appropriate requirement of the employment.” Ocasio-Hernandez, 640 F. 3d at 13. As
14 explained below, we find that Plaintiffs have indeed stated a claim that government
15 officials took adverse action against them on the basis of political affiliation, in jobs for
16 which political loyalty was not an appropriate requirement. Therefore, Plaintiffs have
17 stated a valid claim under §1983.

18 Defendants also argue that Plaintiffs have failed to establish a connection between
19 the alleged actions of discrimination and co-defendant Ayala-Ramos’ conduct. (Docket
20 No. 35 at 17.) Ayala-Ramos was the Human Resources Director of the Child Care
21 Center. (Docket No. 40 at 3.) The inference is clear that a Human Resources Director
22 might be involved in a practice of political discrimination in employment.

1 **2. Municipal Liability**

2 Defendants argue that municipal liability cannot be imposed because *respondeat*
3 *superior* cannot be the basis for municipal liability under 42 U.S.C. § 1983. (Docket
4 No. 35 at 18; Monnell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658, 691
5 (1978)). They argue that the complaint lacks any factual predicate to conclude that the
6 Municipality of Ciales' policy or its custom and usage resulted in the violation of
7 Plaintiffs' constitutional rights. (Docket No. 35 at 18-19.) According to the Supreme
8 Court:

9 [L]ocal governments, like every other § 1983 'person,' by the
10 very terms of the statute, may be sued for constitutional
11 deprivations visited pursuant to governmental 'custom' even
12 though such a custom has not received formal approval
13 through the body's official decisionmaking channels.
14

15 Monell, 436 U.S. at 690-91. The Court stated that "it is when execution of a
16 government's policy or custom, whether made by its lawmakers or by those whose edicts
17 or acts may fairly be said to represent official policy, inflicts the injury that the
18 government as an entity is responsible under § 1983." Monell, 436 U.S. at 694. A
19 municipal "custom," in the context of municipal liability under § 1983, consists of
20 "persistent practices of state officials [...which] [a]lthough not authorized by written law,
21 [...are] so permanent and well settled as to constitute a 'custom or usage' with the force
22 of law." Adickes v. S.H. Kress & Co., 398 U.S. 167-68 (1970).

23 In this case, Plaintiffs allege that they were never evaluated and that none of the
24 NPP-affiliated employees had their contract renewed by the municipal officials in charge
25 of hiring. The Plaintiffs allege that, at least in the Even Start Program, the Municipality

1 renewed appointments for all previous employees affiliated with the PDP. Finally, the
2 Plaintiffs allege that the Municipality substituted every NPP-affiliated employee with a
3 newly-hired PDP-affiliated employee. (Docket No. 40 at 4.) This appears to constitute a
4 “custom” under the foregoing definition.

5 **3. Political Discrimination**

6 It is settled law that “government officials are forbidden by the First Amendment
7 from taking adverse action against public employees on the basis of political affiliation,
8 unless political loyalty is an appropriate requirement of the employment.” Ocasio-
9 Hernandez, 640 F. 3d at 13. Defendants do not argue that political loyalty is an
10 appropriate requirement for these positions. (See Docket Nos. 35, 47.)

11 Within this context, the First Circuit has stated that an actionable claim of political
12 discrimination must show four elements: “[T]hat the protagonists are members of
13 opposing political parties; that the defendant knows of the plaintiff’s political affiliation;
14 that an adverse employment action occurred; and that political affiliation was a
15 substantial or motivating factor behind the adverse action.” Grajales v. Puerto Rico Ports
16 Authority, 682 F.3d 40, 46 (1st Cir. 2012). Defendants state that for the purposes of this
17 motion, they do not dispute that the protagonists are members of opposing political
18 parties or that an adverse employment action occurred. (Docket No. 35 at 7.) Therefore,
19 we will focus on the other two elements.

20 **a. Defendant knew of Plaintiffs’ political affiliation**

21 For pleading purposes, “knowledge may be inferable from other allegations in the
22 complaint.” Rodríguez-Reyes, 711 F.3d at 55. Plaintiffs allege that they were active in

1 the campaign and political activities of the former NPP-affiliated mayor and that
2 Plaintiffs' families are well-known in Ciales as loyal affiliates and followers of the NPP.
3 Plaintiffs include poll-workers, electoral coordinators, voting center volunteers, campaign
4 workers, and members of the former mayor's advance team. They actively participated
5 in walk-about, meet and greets, and motorcades with the former mayor. They also
6 displayed the former mayor's and NPP's political propaganda at their homes. Most of
7 this propaganda could be readily seen by residents of the Municipality, including by
8 Defendant Rodríguez-Pérez, who walked by the Plaintiffs' homes and who, allegedly,
9 along with codefendants, monitored the collaborators and supporters of his political
10 adversaries. Plaintiffs allege that their political affiliations were of common knowledge
11 in the small Municipality of Ciales. (Docket No. 40 at 2.)

12 The First Circuit has stated that information can also be generally available due to
13 a "politically charged atmosphere." Rodríguez-Reyes, 711 F.3d at 55. Ciales had been
14 under the political control of the New Progressive Party ("NPP") for twelve years, from
15 January 2001 to January 2013. In November 2012, the Popular Democratic Party
16 ("PDP")-affiliated candidate, Rodríguez-Pérez, won the mayor's seat by a 66-vote margin
17 in a bitter election. (Docket No. 40 at 1.) Soon thereafter, Rodríguez-Pérez sued the
18 former mayor accusing him of failing to initiate the transition process required by law.
19 Plaintiffs allege that this contributed to the already highly-charged political atmosphere in
20 the Municipality. (Docket No. 40 at 2-3.)

21 In an analogous case, the First Circuit found it important that the plaintiffs were
22 replaced by workers affiliated with the newly-empowered political party, even though the

1 plaintiffs could not identify those replacements by name. Ocasio-Hernandez, 640 F.3d at
2 14. Plaintiffs allege that all of Plaintiffs' substitutes are loyal followers and contributors
3 of the PDP and Rodríguez-Pérez' campaign. (Docket No. 40 at 4.) Plaintiffs allege that
4 Defendants extended the appointments of Even Start employees affiliated with the PDP,
5 but not of those employees affiliated with the NPP. (Docket No. 40 at 4.)

6 Looking at the totality of the complaint, Plaintiffs have adequately pleaded this
7 element.

8 **b. Political affiliation was a substantial or motivating factor behind**
9 **the adverse action**
10

11 The First Circuit has held that “[s]moking gun’ proof of discrimination is rarely
12 available, especially at the pleading stage” and is, therefore, unnecessary. Grajales, 682
13 F.3d at 49. The First Circuit has also stated that “a politically charged employment
14 atmosphere ‘occasioned by a major political shift ... coupled with the fact that plaintiffs
15 and defendants are of competing political persuasions ... may be probative of
16 discriminatory animus.” Acevedo-Diaz v. Aponte, 1 F.3d 62, 69 (1st Cir. 1993) (cited
17 with approval in Ocasio-Hernandez, 640 F.3d at 17). Ciales had been under the political
18 control of the New Progressive Party (“NPP”) for twelve years, from January 2001 to
19 January 2013. In November 2012, the Popular Democratic Party (“PDP”)-affiliated
20 candidate, Rodríguez-Pérez, won the mayor’s seat by a 66-vote margin in a bitter
21 election. (Docket No. 40 at 1.) Soon thereafter, Rodríguez-Pérez sued the former mayor
22 accusing him of failing to initiate the transition process required by law. Plaintiffs allege

1 that this contributed to the already highly-charged political atmosphere in the
2 Municipality. (Docket No. 40 at 2-3.)

3 Further, “[f]or pleading purposes, circumstantial evidence often suffices to clarify
4 ‘a protean issue such as an actor’s motive or intent.’” Rodríguez-Pérez-Reyes, 711 F.3d
5 at 56 (quoting Anthony v. Sundlun, 952 F.2d 603, 605 (1st Cir. 1991)). Temporal
6 proximity “unquestionably contributes at the motion to dismiss stage to the reasonable
7 inference that the employment decision was politically motivated.” Ocasio-Hernandez,
8 640 F. 3d at 18.

9 The First Circuit also found it “‘helpful’ in demonstrating that a particular plaintiff
10 was targeted for his or her political views” when the plaintiffs’ employment positions
11 were filled almost immediately by workers affiliated with the newly-empowered political
12 party. Id. (citations omitted). Here, the PDP-affiliated mayor was sworn in on or about
13 mid-January 2013. (Docket No. 40 at 3.) The Child Care Plaintiffs’ appointments
14 expired March 31, 2013, and they allege that they were immediately replaced by PDP-
15 affiliated employees. (Docket No. 40 at 3-4.) The Even Start Plaintiffs’ appointments
16 ended June 30, 2013, and they allege that all NPP-affiliated employees were substituted
17 with newly-hired PDP-affiliated employees. (Docket No. 40 at 4.) According to these
18 facts, the Plaintiffs were terminated at the earliest opportunity following the election and
19 their spots were immediately filled by workers affiliated with the newly-empowered
20 political party. Other such circumstantial evidence can include “statements of officials
21 indicating an intent not to renew the contracts of persons affiliated with other political
22 parties, [and] the absence of any nondiscriminatory explanation for the adverse

1 employment actions.” Rodríguez-Reyes, 711 F.3d at 57. Rodríguez-Pérez openly
2 expressed his desire to remove Plaintiffs because they were “Palmas” (the nickname for
3 NPP loyalists), who he said made his life difficult. (Docket No. 40 at 4.) In totality,
4 Plaintiffs have sufficiently pleaded this element.

5 **B. Claims Under Puerto Rico Law**

6 Defendants stated that the “Puerto Rico law claims are not addressed in [their]
7 instant motion.” (Docket No. 35 at 2) (alteration ours). Therefore, we choose not to
8 address those claims in this opinion.

9 **IV.**

10 **Conclusion**

11 For the foregoing reasons, the Defendants’ motions to dismiss (Docket Nos. 35,
12 47) are **DENIED**.

13 **IT IS SO ORDERED.**

14 San Juan, Puerto Rico, this 14th day of May, 2014.

15 S/José Antonio Fusté
16 JOSE ANTONIO FUSTE
17 U. S. DISTRICT JUDGE